

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Shevani Patel	Team: Squad #3	CCRB Case #: 201502847	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/08/2015 4:34 AM	Location of Incident: 10th Avenue and West 17th Street	Precinct: 10	18 Mo. SOL 10/8/2016	EO SOL 10/8/2016	
Date/Time CV Reported Wed, 04/08/2015 7:30 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/15/2015 1:59 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Johnpaul Giacona	09996	952778	010 PCT
2. POM Daniel Dongvort	03129	951687	010 PCT
3. An officer			010 PCT
4. POM Richard Caster	17276	952554	010 PCT
5. POM Michael Osullivan	13084	950990	010 PCT
6. POM Jordan Rossi	03917	949581	010 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Patrick Porteus	22066	953265	010 PCT
2. SGT Vincent Fontana	03556	931673	010 PCT
3. POM Gregory Edgar	30167	942778	010 PCT
4. POM Sean Ahearn	00919	948593	010 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Johnpaul Giacona	Discourtesy: PO JohnPaul Giacona spoke discourteously to § 87(2)(b)	
B.POM Johnpaul Giacona	Discourtesy: PO JohnPaul Giacona spoke discourteously to § 87(2)(b)	
C.POM Johnpaul Giacona	Discourtesy: PO JohnPaul Giacona spoke discourteously to § 87(2)(b)	
D.POM Johnpaul Giacona	Abuse: PO JohnPaul Giacona threatened § 87(2)(b) with the use of force.	
E.POM Richard Caster	Force: PO Richard Caster used physical force against § 87(2)(b)	
F.POM Daniel Dongvort	Force: PO Daniel Dongvort used physical force against § 87(2)(b)	
G.POM Johnpaul Giacona	Force: PO JohnPaul Giacona used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
H.POM Michael Osullivan	Force: PO Michael O'Sullivan used physical force against § 87(2)(b)	
I.POM Jordan Rossi	Force: PO Jordan Rossi used physical force against § 87(2)(b)	
J. An officer	Force: An officer used physical force against § 87(2)(b)	
K.POM Richard Caster	Abuse: PO Richard Caster arrested § 87(2)(b)	
L.POM Johnpaul Giacona	Abuse: PO JohnPaul Giacona arrested § 87(2)(b)	

Case Summary

On April 8, 2015, Captain Daniel Dooley of Manhattan South Narcotics reported an injured prisoner, § 87(2)(b) to IAB over the phone. IAB generated log number 15-9279 and referred the case to the CCRB on April 15, 2015 (Board Review 01).

On April 8, 2015, at approximately 4:34 a.m., officers from the 10th Precinct responded to a stabbing outside of 1 OAK nightclub at 453 West 17th Street in Manhattan. The responding officers cleared civilian pedestrians in the area and nearby venues to establish a crime scene. § 87(2)(b) was inside of 1 OAK nightclub when security informed the patrons that the venue was closed and needed to be emptied. § 87(2)(b) left through the nightclub's entrance on West 17th Street along with his teammate, § 87(2)(b) and two women who he did not know at the time, but were subsequently identified as § 87(2)(b) and § 87(2)(b). Upon exiting, § 87(2)(b) noticed 30 to 40 civilians, seven or eight uniformed officers, marked police vehicles and ambulances. To the left of the door was yellow police tape. Officers were directing the crowd to move right, westbound towards the corner of West 17th Street and 10th Avenue. People moved in all directions. § 87(2)(b) and § 87(2)(b) took about 10 to 15 steps to the right. The women's cars were parked to the left, and because it was blocked off, they stopped to figure out where to go. § 87(2)(b) stepped away from the group to learn what incident had occurred that had led to the response of emergency personnel. After standing for about 30 seconds, PO JohnPaul Giacona approached the group alone. He loudly told them to "get the hell out" and to move. The group proceeded to walk towards the corner and PO Giacona continuously walked alongside them directing them to continue moving. He allegedly used profanity towards § 87(2)(b) and § 87(2)(b) making statements such as, "Move the fuck down the street," and, "Get the fuck off my block" (**Allegations A, B and C**). As he was walking, § 87(2)(b) told PO Giacona that he did not need to talk to them like that just because he had a badge and a gun. PO Giacona allegedly responded, "With or without a badge, I will fuck you up" (**Allegation C continued and Allegation D**). § 87(2)(b) called PO Giacona a midget. Once they all reached the corner, § 87(2)(b) and § 87(2)(b) got into a car. § 87(2)(b) and § 87(2)(b) were about to get into another cab when an individual unknown to § 87(2)(b) but subsequently identified as § 87(2)(b) approached § 87(2)(b) and requested money from him. § 87(2)(b) reached into his pocket, removed a stack of money and pulled out a twenty dollar bill for § 87(2)(b). When he looked up, he noticed PO Daniel Dongvort walking § 87(2)(b) away from the cab up the sidewalk. § 87(2)(b) took a few quick steps towards § 87(2)(b) with the money in his hand extended in front of him. Before he was able to give § 87(2)(b) the bill, PO Richard Caster came from § 87(2)(b)'s right and pushed his right shoulder (**Allegation E**). PO Dongvort, PO Giacona, PO Michael O'Sullivan and PO Jordan Rossi grabbed § 87(2)(b)'s arms, brought him to the ground and handcuffed him (**Allegations F, G, H, and I**). An officer, who § 87(2)(b) could not see, kicked his right leg twice (**Allegation J**). PO Caster and PO Giacona improperly arrested § 87(2)(b) for obstructing governmental administration in the second degree, resisting arrest and disorderly conduct (**Allegations K and L**) (Board Review 02). § 87(2)(b) [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)], § 87(2)(a) 160.50 (b)

During § 87(2)(b)'s apprehension, § 87(2)(b) was also arrested (Board Review 04). § 87(2)(b) [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)], § 87(2)(a) 160.50

Two cell phone videos depicting § 87(2)(b)'s arrest (Board Review 07 and 08, surveillance footage from Artichoke Basille's Pizza (Board Review 09) and surveillance footage from Avenue Nightclub (Board Review 10) were obtained by the investigation. Summaries and links to these videos are in the findings and recommendations section.

This case is over 90 days old. The case was initially closed as complainant uncooperative. On October 9, 2015, § 87(2)(b)'s attorney, § 87(2)(b) submitted a re-open request at the conclusion of § 87(2)(b)'s criminal case. The case was re-opened and assigned to the undersigned on October 13, 2015.

Mediation, Civil and Conviction Histories

- Because of a civilian injury, an IAB investigation and a civil lawsuit, this case was unsuitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York on June 16, 2015, claiming severe and permanent personal injuries and seeking fifty million dollars as redress (Board Review 11).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilians and Officers CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) and § 87(2)(b) (Board Review 12).
- PO Giacona has been a member of the NYPD for three years. This is the first CCRB case with allegations against him.
- PO Caster has been a member of the NYPD for three years. He has had three previous CCRB allegations from one case, which was mediated.
- PO Dongvort has been a member of the NYPD for three years. This is the first CCRB case with allegations against him.
- PO O'Sullivan has been a member of the NYPD for four years. This is the first CCRB case with allegations against him.
- PO Rossi has been a member of the NYPD for five years. This is the first CCRB case with allegations against him.

Video Footage and Field Work

- Two cell phone videos were posted § 87(2)(b). The first video is titled, § 87(2)(b) -- § 87(2)(b) (Board Review 13). The second video is titled, § 87(2)(b) § 87(2)(b) (Board Review 14). Each is a different angle of the arrests. The investigation obtained the original cell phone videos § 87(2)(b) (Board Review 07 and 08). Summaries and links to these videos are included in the findings and recommendations section.

- On April 15, 2015, at approximately 6:30 p.m., Inv. Luke Petrinovic conducted field work at the incident location (Board Review 15). Inv. Petrinovic visited a restaurant called The Park (118 10th Avenue). Inv. Petrinovic spoke with the General Manager, § 87(2)(b) who said that she had already reviewed all her surveillance footage with the NYPD, and it did not cover any of the arrests in this case. Inv. Petrinovic obtained video footage from exterior cameras at Artichoke Basille's Pizza (114 10th Avenue). § 87(2)(b)'s attorney, § 87(2)(b), provided enhanced video footage from this location (Board Review 09). A summary and link to this video are included in the findings and recommendations section.
- On April 20, 2015, Inv. Adrian Legaspi and Inv. Stanislav Sazonov obtained video footage from a club called Avenue (116 10th Avenue) (Board Review 16). § 87(2)(b)'s attorney, § 87(2)(b) provided the CCRB with enhanced footage from Avenue (Board Review 10). A summary and link to this video is included in the findings and recommendations section.
- On April 22, 2015, at approximately 2:30 a.m., Inv. Kevin O'Connor and Inv. Bernardo Gutierrez conducted field work at the incident location (Board Review 17). They spoke with § 87(2)(b) the head of security at 1 OAK. § 87(2)(b) did not witness the arrests and was inside the club instructing patrons to leave at the time, as he was told to by officers. § 87(2)(b), the Assistant General Manager of 1 OAK, stated none of his employees were outside during the arrest. Video footage provided by 1 OAK's counsel, § 87(2)(b) provided footage from the club. Several camera angles depict § 87(2)(b) and § 87(2)(b) in the club. The exterior footage does not show much of the sidewalk. No angles provided show the police encounter. § 87(2)(b)'s attorney, § 87(2)(b) provided the CCRB with a labeled compilation of § 87(2)(b) and § 87(2)(b) exiting 1 OAK (Board Review 18). These videos do not show any police encounter.
- On August 5, 2015, IAB provided the CCRB with two surveillance videos from the south side of 17th Street. Neither video shows the apprehension (Board Review 19–21).

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) alleged that an officer, who he could not see, kicked his right leg twice. No officer acknowledged kicking § 87(2)(b)'s leg or acknowledged attempting to bring him to the ground by sweeping him by his ankles. No civilian corroborated this allegation and it is not depicted in the video. § 87(2)(g)

Allegations Not Pleaded

- **Force: Physical Force:** [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)], § 87(2)(a) 160.50
 § 87(2)(b) PO O'Sullivan stated that as he and the other officers were attempting to subdue § 87(2)(b) § 87(2)(b) approached and touched his shoulder. PO O'Sullivan pushed § 87(2)(b) away. § 87(2)(g)
- § 87(2)(g)

§ 87(2)(g)

Allegation A – Discourtesy: PO JohnPaul Giacona spoke discourteously to § 87(2)(b)

Allegation B – Discourtesy: PO JohnPaul Giacona spoke discourteously to § 87(2)(b)

Allegation C – Discourtesy: PO JohnPaul Giacona spoke discourteously to § 87(2)(b)

Allegation D – Abuse of Authority: PO JohnPaul Giacona threatened § 87(2)(b) with the use of force.

§ 87(2)(b) testified in criminal court on § 87(2)(b) (Board Review 22). § 87(2)(a) 160.50

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) testified in criminal court on § 87(2)(b) (Board Review 22). § 87(2)(a) 160.50

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) was interviewed by the CCRB on October 21, 2015 (Board Review 23 and 55). After exiting 1 OAK, § 87(2)(b) and § 87(2)(b) had been standing about 10 to 15 steps to the right of the door for about 30 seconds when PO Giacona approached them. He said to § 87(2)(b) “Get the hell out of here. Move. Move. Get the hell out.” PO Giacona’s voice was raised, rude and aggressive. The group started to walk. PO Giacona kept saying, “Move,” and, “Get the hell out of here,” as they were moving. He told them that he was New York Police, that they had no business being there and that he was in charge. § 87(2)(b) told PO Giacona that he did not need to talk to them like that just because he had a badge and a gun. PO Giacona said to § 87(2)(b) “With or without a badge I will fuck you up.” § 87(2)(b) told him, “I highly doubt it. You’re 5’2”. I don’t know why you mad, but you’re a midget and you wouldn’t do anything because of colleagues, your gun and your badge.”

§ 87(2)(b) § 87(2)(b), testified at criminal court on § 87(2)(b) (Board Review 24). § 87(2)(a) 160.50. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

PO Giacona was interviewed at the CCRB on May 27, 2015 and October 30, 2015 (Board Review 27 and 28). PO Giacona encountered § 87(2)(b) and two females conversing with one another about 50 feet west of the crime scene. PO Giacona requested them to leave the crime scene, or to do whatever they needed to do away from the block they were

standing on. They complied, but did not move from the spot. PO Giacona walked away to direct others off the block. He approached § 87(2)(b) and the group about five or six times. On the sixth attempt, § 87(2)(b) appeared to become agitated. He told PO Giacona, “I would be upset also if I was a midget.” PO Giacona did not recall any other statements made to him by § 87(2)(b). He said that § 87(2)(b) never made any comments about his gun or badge. PO Giacona’s attempts to get them to move went on for about five or six minutes. PO Giacona denied making any of the alleged statements or threatening § 87(2)(b) with the use of force. When asked if he used any profanity, PO Giacona said, “Not that I recall.”

PO Caster was interviewed at the CCRB on May 28, 2015 and October 30, 2015 (Board Review 29 and 30). PO Dongvort was interviewed on May 27, 2015 and October 29, 2015 (Board Review 31 and 32). PO Rossi was interviewed on May 29, 2015 (Board Review 33). All three officers heard § 87(2)(b) call PO Giacona a midget (PO Rossi also heard him call PO Giacona a “fucking pussy”), but did not hear what was said by PO Giacona immediately prior to that or hear PO Giacona make any of the alleged remarks or use any profanity or threats of force against § 87(2)(b). PO O’Sullivan was interviewed at the CCRB on May 28, 2015 and November 5, 2015 (Board Review 34 and 35). PO Gregory Edgar was interviewed at the CCRB on November 4, 2015 (Board Review 36). He saw PO Giacona talking to § 87(2)(b) but he did not recall if PO Giacona made any of the alleged remarks. Officers, who he could not recall, directed § 87(2)(b) to leave. He could not overhear the conversation, any specific directives or profanity. Sgt. Vincent Fontana was interviewed at the CCRB on October 29, 2015 (Board Review 37 and 38). PO Patrick Porteus was interviewed at the CCRB on October 30, 2015 (Board Review 39). PO Sean Ahearn was interviewed at the CCRB on November 4, 2015 (Board Review 40). None of these officers saw PO Giacona directly engaged with any civilians or § 87(2)(b) or overheard any officers use profanity.

Patrol Guide Procedure 203-09 stipulates that officers must be courteous and respectful (Board Review 25). An officer is not permitted to make a threat of force if it is either egregious or used solely to intimidate or antagonize an individual who is not posing a threat to anyone else’s safety. NYPD v. Briscoe, OATH Index 1328/00 (Board Review 26).

§ 87(2)(g)
[REDACTED]

Allegation E – Force: PO Richard Caster used physical force against § 87(2)(b)
Allegation K – Abuse of Authority: PO Richard Caster arrested § 87(2)(b)

Allegation L – Abuse of Authority: PO JohnPaul Giacona arrested § 87(2)(b)

§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)], § 87(2)(a) 160.50

[REDACTED]

§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)], § 87(2)(a) 160.50

[REDACTED]

§ 87(2)(b) testified in criminal court on § 87(2)(b) (Board Review 24). [§ 87(2)(b)] [§§ 86(1)(3)&(4)]

§ 87(2)(a) 160.50

[REDACTED]

§ 87(2)(b) testified in criminal court on § 87(2)(b) (Board Review 24). § 87(2)(a)

§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

According to PO Giacona, Sgt. Fontana directed the 10 to 15 officers on scene to clear 1 OAK, Artichoke Pizza and the surrounding areas (the entire sidewalks and the street) from about 30 to 45 feet east of 1 OAK's front door (453 West 17th Street) and west all the way to 10th Avenue and the adjoining blocks from West 18th Street and West 16th Street on the eastside of 10th Avenue. The block needed to be cleared for emergency vehicles and personnel and for the officers to secure a crime scene. The officers escorted people in the crowd on West 17th Street to go westbound towards 10th Avenue, and either towards West 16th Street or West 18th Street once they reached 10th Avenue. People were generally compliant and moved off of the block.

About 10 to 15 minutes after the officers first began to clear the crime scene and approximately 15 to 20 feet west of 1 OAK's door, PO Giacona encountered § 87(2)(b) and two women in the sidewalk. They were conversing with one another. PO Giacona requested them to leave the crime scene and move away from the block. They verbally complied, but did not move from the spot. PO Giacona walked away to direct others off the block. He approached § 87(2)(b) and the same group for a second time. He asked them to move. They told him they would move, but only moved three steps. After leaving and then returning, PO Giacona asked them to move again. They took three steps and stopped. PO Giacona approached § 87(2)(b) and the group about five or six times in total, but in each instance they would only move a couple of steps westbound. On the sixth attempt, § 87(2)(b) appeared to become agitated. PO Giacona's attempts to get them to move went on for about five or six minutes. PO Giacona continued to escort them towards the corner. Once they reached the corner of West 17th Street and 10th Avenue, PO Giacona was no longer engaged with them. Other officers escorted the group to a black SUV. PO Dongvort held open the back passenger's side door and § 87(2)(b) was about to enter the car (about a foot away). PO Giacona noticed § 87(2)(b) walk away from the SUV, reaching about five feet from the car, but PO Giacona directed his attention to other pedestrians and did not notice what § 87(2)(b) was doing until he saw PO Caster and PO Dongvort trying to arrest him. He did not recall where § 87(2)(b)'s hands were or his pace. PO Giacona did not see anyone approach § 87(2)(b) or hear any conversation about money.

PO Giacona stated that it was his decision to place § 87(2)(b) under arrest on scene. He made this decision because he saw § 87(2)(b) resist PO Dongvort and PO Caster.

§ 87(2)(a) 160.50

PO Giacona stated that while attempting to clear the area and establish a crime scene, he asked § 87(2)(b) six times to disperse and clear the area. § 87(2)(b) moved a couple of feet away but refused to clear the area. PO Caster informed him that § 87(2)(b) charged in the direction of PO Dongvort's back. § 87(2)(b) flailed his arms, twisted his body, kicked his legs and struggled against the officer (Board Review 41).

PO Caster stated that as he was directing other people out of the area, he overheard PO Giacona instruct § 87(2)(b) who was standing in the street, to move from the location several times. PO Caster could not recall how many times § 87(2)(b) was asked to move. PO Caster did not see § 87(2)(b) move or attempt to move. It appeared as though § 87(2)(b) intentionally delayed moving. He turned away when PO Giacona approached him, and stopped other people to talk to them. PO Caster heard § 87(2)(b) called PO Giacona a midget so he walked over to see what was going on. PO Caster only overheard this interaction for a few seconds prior. He walked over and § 87(2)(b) asked him why he had to leave. PO Caster explained that it was a crime scene that the officers were clearing the area. Because § 87(2)(b) was combative, PO Caster told § 87(2)(b) to get § 87(2)(b) to leave as he was going to end up getting in trouble.

§ 87(2)(b) and § 87(2)(b) walked to the corner where a cab pulled up. § 87(2)(b) did not immediately get into the cab, but instead would stop and speak with bystanders. § 87(2)(b) went to the passenger's side door of the cab, opened the door and began to step in before coming back out and speaking with another bystander, who PO Caster had not seen prior and could not describe. PO Caster could not estimate the distance between where § 87(2)(b)'s conversation with the bystander occurred and the cab. He could not overhear what was said. He did not hear any conversation about money. In less than a minute, PO Dongvort approached and escorted the bystander away going north on 10th Avenue. PO Dongvort stood to the bystander's left (which was closest to PO Caster). They moved at a walking pace.

§ 87(2)(b) ran towards PO Dongvort from behind with his arm fully extended (PO Caster could not recall which) in front of him. His arm was reaching more towards PO Dongvort than upwards. § 87(2)(b) did not say anything as he went towards him. PO Caster did not see anything in his hand. He did not know where § 87(2)(b)'s other hand was. It appeared to PO Caster that § 87(2)(b) was charging at PO Dongvort for a reason he did not know. Before § 87(2)(b) made any physical contact with PO Dongvort (his hand was within one step), PO Caster grabbed either § 87(2)(b)'s arms or chest (he could not recall) and walked him into the street where he informed him that he was under arrest. § 87(2)(b) never told PO Caster that he was intending to give money to the bystander. At no point did PO Caster see cash in § 87(2)(b)'s hand. PO Caster grabbed § 87(2)(b) to prevent him from making contact with an officer. When he first grabbed him, PO Caster intended to stop and arrest § 87(2)(b). PO Caster stated that he had probable cause from "the moment § 87(2)(b) disobeyed PO Giacona's orders," and that when § 87(2)(b) charged at PO Dongvort, he aggravated the situation. PO Caster stated that at that point § 87(2)(b) could have been arrested for obstructing governmental administration and disorderly conduct.

According to PO Dongvort, § 87(2)(b) and § 87(2)(b) refused to leave the area after more than 15 or 20 requests from many officers. PO Dongvort did not notice any other civilians within

the restricted crime scene area. During these few minutes at no point did either of them attempt to leave the block. PO Dongvort did not recall whether § 87(2)(b) and § 87(2)(b) were stationary or moving when they were engaged with PO Giacona.

PO Dongvort saw § 87(2)(b) and § 87(2)(b) walk towards an arriving cab. The doors opened, but before either man got into the car, an unidentified black male approached them and attempted to say something to § 87(2)(b). PO Dongvort, who was standing about a foot away, heard the conversation, but he did not recall what it was about. He did not recall if the man asked § 87(2)(b) for money. PO Dongvort did not see § 87(2)(b) remove anything from his pockets or see cash in his hands. The conversation did not seem to be aggressive. § 87(2)(b) was in the car. PO Dongvort escorted the unidentified male down the block. PO Dongvort walked directly behind him without making any physical contact. As PO Dongvort and the unidentified male were about one and half car lengths away from the cab, PO Dongvort noticed something in his peripheral vision coming from behind. He did not know who this was. He did not see the pace at which this person was coming nor did he hear any statements being made. When he turned around, he saw § 87(2)(b) in the street. PO Dongvort could not recall if § 87(2)(b) was only with PO Caster or with other officers. PO Dongvort later learned from other officers, that § 87(2)(b) charged at him from behind. Before § 87(2)(b) was able to make any contact with PO Dongvort, an officer pushed or tackled § 87(2)(b) into the street. PO Dongvort did not recall hearing any officer issuing commands to § 87(2)(b) as he was coming towards PO Dongvort.

§ 87(2)(b)'s attorney provided edited surveillance footage from two cameras in which § 87(2)(b) is depicted with a green circle and § 87(2)(b) is depicted with a yellow circle.



The footage from Artichoke Basille's Pizza artichoke.mp4 (Board Review 9 for video and Board Review 42 for transcription) shows § 87(2)(b) and two individuals walk down the sidewalk towards 10th Avenue. There are groups of people in front of him and behind him. For a little more than 20 seconds, he remains standing in the same spot before moving off screen. § 87(2)(b) and a woman appear and walk towards 10th Avenue. There are about 5 to 10 civilians behind them.



The footage from Avenue avenuefootage1.mp4 (Board Review 8 for video and Board Review 43 for transcription) shows § 87(2)(b) quickly move to the right of the screen. The video is blurry and it is unclear what or who he is running towards.



In a cell phone video taken of the apprehension (discussed in detail below) snagitcellphone2.mp4 (Board Review 8 for video and Board Review 51 for transcription) § 87(2)(b) has a stack of bills in his left hand. At 26 seconds, an unidentified woman says, "He was trying to give him money."

New York State Penal Law §195.05 states that a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs, or perverts the administration of law or prevents a public servant from performing an official function by means of intimidation, physical

Patrol Guide Procedure 203-11 authorizes an officer to use the minimum amount of force necessary to effect an arrest (Board Review 53). When there is no legal basis to effect an arrest, any force used is improper and therefore excessive. NYPD v. Grossman, *OATH Index No. 2382/00R* (Board Review 54).

[illegible]

Allegation F – Force: PO Daniel Dongvort used physical force against § 87(2)(b)

Allegation G – Force: PO JohnPaul Giacona used physical force against § 87(2)(b)

Allegation H – Force: PO Michael O'Sullivan used physical force against § 87(2)(b)

Allegation I – Force: PO Jordan Rossi used physical force against § 87(2)(b)

§ 87(2)(a) 160.50, [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(a) 160.50, [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(a) 160.50, [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)'s medical record from an x-ray taken on § 87(2)(b) note that he suffered a fracture of the right fibula, a deltoid ligament sprain with a tear of three ligaments (Privileged Documents). § 87(2)(b)'s arrest photograph depicts no visible lacerations, marks or bruises (Board Review 46). The command log entry notes an injury to § 87(2)(b)'s ankle (Board Review 47).

§ 87(2)(a) 160.50, [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

PO Caster stated that he grabbed either § 87(2)(b)'s arms or chest as PO Dongvort and PO Giacona approached. PO Dongvort struggled to get § 87(2)(b)'s left arm. The officers and § 87(2)(b) moved towards the street. PO Caster pulled § 87(2)(b)'s right arm behind his back, but § 87(2)(b) overcame the hold by moving both his arms from behind his back to the front of his body. PO Caster was unable to bring the arm back around. PO Caster pulled § 87(2)(b)'s right arm outward. He used his right hand to grab § 87(2)(b) from behind his head (never his neck) and used his left arm to pull his right arm behind his back. In this position PO Caster pulled § 87(2)(b) down to the ground. PO Caster did not recall how § 87(2)(b) landed. PO Caster made no attempts to sweep § 87(2)(b)'s feet or kick his legs or ankles. He did not see any other officer do this. On the ground, § 87(2)(b) moved his torso around. PO Caster did not see if he was moving his legs. PO Caster was on the right side of his upper body. He could not see if officers were holding him down below. The officers attempted to pull his arms behind his back, but § 87(2)(b) held his arms stiff (PO Caster could not recall where). It took the officers roughly a minute to place handcuffs on § 87(2)(b). At the stationhouse, PO Caster heard § 87(2)(b) complain of pain to one of his legs, which he accused the officers of causing.

§ 87(2)(g)

PO Dongvort was unable to recall or describe the manner in which § 87(2)(b) was taken to the ground. On the ground, § 87(2)(b) kept one of his arms tucked stiffly near his chest. At the stationhouse desk, § 87(2)(b) complained of injury to his ankle and stated that it was a pre-existing injury, but he did not specify if his injury was exacerbated as a result of this incident.

PO O'Sullivan and PO Ahearn did not recall how § 87(2)(b) was taken to the ground. PO O'Sullivan did not step or place his foot on § 87(2)(b)'s leg when he was on the ground. PO Ahearn did not make any physical contact with § 87(2)(b).


PO Giacona stated that he wrapped his arms around both of § 87(2)(b)'s upper thighs with his arms in order to lift him and then sweep him to the ground. The officers placed him down without releasing contact. § 87(2)(b) did not move around on the ground. PO Giacona straddled him on his upper thighs and buttocks and had his legs parallel to his. At the front desk, PO Giacona heard § 87(2)(b) say that he suffered this injury prior to his engagement with police. Arrest documentation, prepared by PO Giacona, note that he resisted arrest by flailing and tightening his arms while being handcuffed by multiple officers (Board Review 02 and 48). The medical treatment of prisoner report, prepared by PO Giacona, records § 87(2)(b)'s complaint of pain to the right ankle. EMS was requested to the stationhouse and tended to § 87(2)(b) with an icepack. He complained that he suffered the ankle injury and pain prior to being engaged with police (Board Review 49).

PO Rossi stated that he briefly touched § 87(2)(b)'s shoulders twice, but never had any control of his arms. He did not see how the officers took § 87(2)(b) to the ground. PO Rossi extended his asp, but never struck § 87(2)(b).

PO Edgar did not have any recollection of § 87(2)(b)'s apprehension. PO Porteus and Sgt. Fontana did not observe any part of the apprehension.

An Unusual Occurrence Report, prepared by Captain Daniel Dooley of Manhattan South Narcotics, notes that § 87(2)(b) complained of pain in his right ankle which he alleged occurred when he was wrestling with the officers (Board Review 50).

Two cell phone videos depict most of § 87(2)(b)'s arrest. Neither video shows the initial force, as each starts in the middle of the apprehension.

The first video  snagitcellphone2.mp4 (Board Review 8 for video and Board Review 51 for transcription) shows § 87(2)(b) facing away from officers, as they pull his arms behind his body. He pulls his body forward, stands upright and moves his arms from behind his back to the front of his waist as officers hold his wrists. PO Giacona and PO Dongvort are holding onto his left arm and PO O'Sullivan is standing behind him. PO Caster pulls his right arm to the side, and § 87(2)(b) and three or four officers around him move in between the two cars until they are off screen. § 87(2)(b) is next seen on the ground between two parked cars. Officers are kneeling around him. PO Rossi is standing near to § 87(2)(b)'s head, expands his asp in his right hand. His right hand remains in the same spot away from his body while his left hand is on an officer's shoulder. The camera moves around an officer until § 87(2)(b) and the officers are

	Title/Signature	Print	Date
Attorney:	_____	_____	_____
	Title/Signature	Print	Date